Supreme Court, U.S.
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No. 96-2020

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

CLIFFORD HOUSTON,

Petitioner,

v.

CONRAD FINNELL,
CITY OF KINGSTON, TENNESSEE, *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

WHETHER THE DISTRICT COURT CORRECTLY DISMISSED PETITIONER'S COMPLAINT FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED BASED UPON THE APPLICABLE ONE YEAR STATUTE OF LIMITATIONS IN TENNESSEE CONTAINED IN TENN. CODE ANN. § 28-3-104(A)(3), WHERE PETITIONER'S COMPLAINT ON ITS FACE TOGETHER WITH THE EXHIBITS FILED THEREWITH REFLECT THAT THE PETITIONER'S ALLEGED CIVIL RIGHTS INJURY OCCURRED AT THE LATEST UPON THE CONCLUSION OF PETITIONER'S PREVIOUS CIVIL RIGHT'S ACTION ON DECEMBER 9, 1993 AND PETITIONER DID NOT FILE THE INSTANT COMPLAINT UNTIL OVER TWENTY-THREE MONTHS LATER ON NOVEMBER 20, 1995.

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STATEMENT OF THE CASE

A. Proceedings Below.

Plaintiff filed on November 20, 1995 the instant *pro se* Complaint under 42 U.S.C. §1983, (R. 1: Complaint). On December 15, 1995, the Honorable Thomas G. Hull, U.S. District Judge, a defendant filed *pro se* a Motion to

Dismiss based upon the statute of limitations. (R. 2: Motion). On December 18, 1995, Defendants City of Kingston, Roane County Sheriff's Department, Randy Scarborough, Gary Humphreys, Dale Brown, Jimmy Washam, attorney John C. Duffy and the firm of Watson, Hollow and Reeves, P.L.C. filed a Motion to Dismiss asserting *inter alia* the statute of limitations. (R.23: Motion to Dismiss R.24 Memorandum in Support of Motion to Dismiss). Defendants Conrad Finnell and Conrad Finnell, P.C. & Associates filed a Motion to Dismiss on January 2, 1996 (R.26: Motion). On January 4, 1996, the district court entered an Order granting the Motion to Dismiss filed by Judge Hull based on the statute of limitations, which Order also dismissed all other Defendants on the same basis. (R.29: Order and R. 28: Memorandum Opinion). On January 5, 1996, after the dismissal of his case, Plaintiff filed a Motion to Amend. (R. 32, 33: Motion to Amend). The district court denied the Plaintiff's Motion and admonished Plaintiff to review Rule 11 before filing additional documents. (R. 34: Memorandum and Order). Plaintiff filed on February 1, 1996 a Notice of Appeal (R. 35: Notice of Appeal). The United States Court of Appeals for the Sixth Circuit affirmed the district court's order dismissing this Complaint for failure to state a claim. Plaintiff/Petitioner now seeks to have a Writ of Certiorari granted pursuant to a Petition filed on June 17, 1997 and docketed on June 23, 1997 in the Supreme Court of the United States. The Respondents seek the denial of Plaintiff's Petition for Certiorari.

B. Statement Of Facts.

Plaintiff Houston's seventeen page Complaint alleged that Respondents herein and other Defendants conspired with each other and United States District Judge Thomas G. Hull to adversely affect the trial of a civil rights action (No. 3-91-402) in which Houston sued the City of Kingston, Tennessee and others. The trial where his claims allegedly occurred took place on December 8 and 9, 1993. These acts of alleged conspiracy between Plaintiff's lawyer at the time, Conrad Finnell, the Judge, and others took place during trial on the 8th and 9th of December, 1993 or before. The last act of the alleged conspiracy dealt with a release of exhibits by the U.S. Magistrate Judge on December 9, 1993. The trial of No. 3-91-402 was concluded on December 9, 1993 and is not the subject of this appeal.

In bringing this suit, Plaintiff sued the City of Kingston, Tennessee; officers of the City; U.S. District Judge Thomas G. Hull; Janet Reno, the head of the FBI; his lawyer; defendants' lawyers, etc. He maintained that his rights were violated under the Fourth, Fifth, Sixth, Eighth, and Eighteenth Amendments as well as various state laws.

The U.S. District Court Judge James Jarvis considered the various motions filed under Rule 12(b)(6) and determined that the motions should be granted because the action is barred by the statute of limitations.

The applicable statute of limitations for actions under 42 U.S.C. §1983 is the personal jury statute existing under the governing state law where the action is pending. *Wilson v. Garcia,* 471 U.S. 261 (1985). In Tennessee, civil rights actions are governed by the one year statute contained in Tenn. Code Ann. §28-3-104. *Dunn v. State*

of Tennessee, 697 F.2d 121 (6th Cir) *cert denied sub nom Wyllie v. Dunn,* 460 U.S. 1086 (1982).

Although state law provides the statute of limitations to be applied in a §1983 action, federal law governs when that limitations period begins to run. *Sevier v. Turner,* 742 F.2d 262, 272 (6th Cir. 1984). The statute of limitations begins running when the Plaintiff knows or has reason to know of the injury which is the basis of his action. *Id.* at 273. A plaintiff is held to have reason under the law to know of his injury where he should have discovered it through the exercise of reasonable diligence. *Id.*

In the instant case, the face of Houston's Complaint and the exhibits submitted therewith reflect that all of the alleged conspiratorial actions and resultant alleged injury with respect to the trial of Houston's civil rights action, No. 3-91-402, occurred at the December 8 thru December 9, 1993 trial thereof. Judgment was entered December 9, 1993. The last alleged overt act in the alleged conspiracy was the authorization by United States Magistrate Judge Thomas W. Phillips on December 9, 1993, for the release of contraband to the law enforcement agency which introduced it at trial. Houston filed this action on November 20, 1995. Since Houston filed the instant Complaint nearly two years after Plaintiff's cause of action accrued, the Complaint reflects on its face that it is barred by the applicable one year statute of limitations. Accordingly, Houston's Complaint fails to state a claim upon which relief can be granted and should be dismissed as to all Defendants.

As stated in the Sixth Circuit Opinion:

> The district court properly dismissed this suit pursuant to Fed.R.Civ.P. 12(b)(6) because, even when Houston's complaint is construed in a light most

favorable to the plaintiff and even when Houston's factual allegations are accepted as true, Houston undoubtedly can prove no set of facts in support of his claim that would entitle him to relief. *LRL Properties v. Portage Metro Hous. Auth.*, 55 F.3d 1097, 1103 (6th Cir. 1995). Houston's complaint is clearly barred, for the reasons stated by the district court. *Sevier v. Turner*, 742 F.2d 262, 272 (6th Cir. 1984). Houston's cause of action accrued at the time of the trial in December of 1993, when Houston knew or had reason to know of the injury that is the basis of his action. *Friedman v. Estate of Presser*, 929 F.2d 1151, 1159 (6th Cir. 1991). The one-year state statute of limitations also applies to Houston's claims that were filed against the federal defendants pursuant to *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 390-97 (1971). *See Butz v. Economou*, 438 U.S. 478, 503-04 (1978); *McSurely v. Hutchison*, 823 F.2d 1002, 1005 (6th Cir. 1987), *cert. denied*, 485 U.S. 934 (1988).

REASONS FOR DENYING THE WRIT

The Respondents suggest that there is no split in any of the circuits on the issue presented in this case. The statute of limitations for filing a civil rights action under 42 U.S.C. §1983 is one year for the State of Tennessee. Plaintiff's action, real or imagined, is barred by the statute of limitations and under Rule 12(b)(6) fails to state a claim.

CONCLUSION

This case does not merit further review by this Court. For the foregoing reasons, Houston's Petition should be denied.

Respectfully submitted,

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